CONFERENCE ON DISARMAMENT

CD/1206
CD/TIA/WP.11
20 July 1993

Original: ENGLISH

UNITED STATES OF AMERICA

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Transparency in Armaments Ad Hoc Committee
Conference on Disarmament
Geneva, March 19, 1993

My delegation appreciates the opportunity to meet with members of the Ad Hoc Committee for Transparency in Armaments to discuss the relationship of Transparency in the field of export controls of conventional military equipment and technology.

The end of the cold war has sharply reduced some old dangers such as strategic nuclear arms or massive bloc to bloc conventional conflict in Europe. This welcome situation can be expected to free human, economic, and intellectual resources for peaceful purposes. However, all of us recognize that the fundamentally new situation we face contains a new set of dangers and challenges which we must confront with wisdom and determination.

In a world dominated by opposing military blocs, nonproliferation efforts concentrated on control of nuclear arms while facilitating peaceful nuclear activities. Conventional arms, while important, were secondary to the strategic nuclear equation.

In just a few short years, other arms control activities have received great attention, and situations that were once unthinkable have come to pass. Strategic nuclear forces have been drastically reduced and the same is true of tactical nuclear weapons in Europe and elsewhere. The Conference on Disarmament, after prolonged negotiations, reached agreement on the Chemical Weapons Convention, a major step forward. There is new attention to biological weapons and to delivery systems of weapons of mass destruction.

In all of this activity, there is a realization that attention should also be paid to the control of conventional armaments. Discussion of this problem has taken place in the United Nations, in the Conference on Disarmament, in NATO, the European Community, CSCE and, I dare say, in other fora as well as in bilateral discussions. For the past two days, my colleagues and I have taken part in a discussion of arms export controls in the Security Forum of the CSCE.

In Vienna, discussions revealed that:

- All CSCE members maintain, or are in the process of creating, national controls on arms exports and imports.

- All current systems have several features in common, including an established legal or executive basis, a licensing system, policies that reflect both national interests and international responsibilities, including means of enforcement.

- Many CSCE members have subscribed to multilateral nonproliferation regimes, and to international guidelines on arms exports.

- All CSCE members have undertaken to support the UN Register of Conventional Arms by making timely submissions of data on national arms exports and imports.

I think it is fair to say that there is a growing realization that the area of conventional arms export and import controls deserves attention. In London in October 1991, the five major arms suppliers agreed on a set of guidelines. Concerning restraints, the participants agreed that:

- They will consider carefully whether proposed transfers will promote the capabilities of the recipient to meet needs for legitimate self-defense; serve as an appropriate and proportionate response to the security and military threats confronting the recipient country; and enhance the capability of the recipient to participate in regional or other collective arrangements or other measures consistent with the charter of the United Nations or requested by the United Nations.

- They will avoid transfers which would be likely to prolong or aggravate an existing armed conflict: increase tension in a region or contribute to regional instability; introduce destabilizing military capabilities in a region; contravene embargoes or other relevant internationally agreed restraints to which they are parties; be used other than for the legitimate defense and security needs of the recipient state; support or encourage international terrorism; be used to interfere with the internal affairs of sovereign states; or seriously undermine the recipient

It is in this encouraging context that I welcome the opportunity to speak to you about rules of the road for U.S. arms transfers -- the policies that guide our sales and exports of conventional weaponry. It is in this context that the U.S. makes arms sales which are consistent with U.S. foreign policy and security interests. Exports are banned to nations that support terrorism, and are severely restricted to those that violate human rights or have engaged or are likely to engage in aggression.

The vast bulk of U.S. sales go to NATO and other friends and allies. Given the pattern of our sales, we have not supported constraints on the overall volume or value of U.S. defense sales, outside the context of broader arms control agreements, nor have we supported unilateral moratoria on defense sales.

Our most visible effort at restraint is the 1991 Arms Control in the Middle East Initiative with the four other major arms suppliers. The Initiative explicitly seeks to combine restraint among arms suppliers with an effort to reduce demand by establishing a regional political process. As part of this, the U.S. co-sponsors an Arms Control and Regional Security (ACRS) Working Group, which seeks to share our experience in arms control and confidence-building measures with Middle Easter states, and to identify specific confidence-building measures for future discussion. We have made similar efforts in other regions.

Our goal is to avoid destabilizing arms flows that can create a threat to international peace and security. We remain committed to continuing responsible arms transfers to meet the legitimate defense needs of our friends and allies. We are also working on some global measures in the United Nations to address this problem, such as Transparency in Armaments (TIA).

We applaud the recent CSCE resolution agreed to in support of the TIA Initiative. The U.S. is already more transparent in arms transfers than other countries. We are eager to help others become more open about their arms transfers.

We consider the UN Transparency in Armaments Initiative to be the principal international venue for transpatency. As Ambassador Ledogar stated to the CD two weeks ago, we believe all governments represented around this table attach great importance to ensuring that the register is a successful one. As you know, the deadline for national submissions, April 30, is fast approaching. My government is busily preparing data on conventional imports and exports, along with available background information regarding our military holdings, procurement through national production, and relevant policies.

The U.S., along with many others, sees great value in establishing a global confidence-building measure which highlights transparency and openness with regard to the flow of conventional arms. While the CD will be pursuing distinct issues related to transparency in armaments, the U.S. thinks this conference could also usefully undertake efforts to give the so-called "New York" track -- the register, a boost. In fact, individually and collectively, members of this conference should take the lead in promoting the UN Register and ensuring its effective operation.

Some may ask how should the conference do this. What measure should the CD embark on with regard to the register? As a starting point, we suggest that the CD could do two things. First, the CD member states could agree collectively that they will provide the Register's requested data and information to the United Nations Secretary-General on time, complying with the Register's April 30th deadline. Second, the CD could agree that we will encourage others to do the same, beginning with non-member participant states of the CD.

As a separate initiative, and noting what our friends in Vienna are doing, I believe that the conference could also agree that on or about April 30, when we submit data to the register we will exchange informally, among ourselves, here in Geneva, copies of national submissions.

The Conference on Disarmament, as the sole multilateral global negotiating body on disarmament, should pursue not only its own transparency in armaments objectives, but also take the lead in supporting and promoting the UN Register. What better way for this body to show the international community its resolve of openness and transparency in the area of conventional arms?

The London Guidelines for Conventional Arms Transfers that I elaborated on earlier are a good starting point for building international consensus on common principles regarding what are good or bad arms transfers. Further discussions -- bilaterally, as we are doing now with Russia and other former Warsaw Pact states, or multilaterally in the CD, ACME, or other fora -- of the policy rationale for arms transfers (as opposed to the purely commercial benefits) can be expected.

We realize that arms transfers restraints which are not multilateral will only encourage other suppliers to increase arms production and sales in order to fill the vacuum left by responsible suppliers, and that our efforts should be undertaken in a multilateral context. However, it is important that this context include all significant suppliers. The U.S. will support friends and allies as we have in the past, in complete accord with our own stringent policy guidelines.

As many of you are aware, the United States has approached a number of governments on a strictly bilateral basis to discuss our concern with the exports of arms and arms-related technology to various third countries. We have sought to dispel any impression that, in raising questions about specific transactions, the U.S. objects to foreign arms exports, or seeks to protect U.S. commercial interests by freezing other countries' firms out of the international arms trade.

In the interest of ensuring that world arms sales are compatible with preserving regional and global stability -- an objective shared by all responsible members of the international community -- I would like to take this opportunity to discuss the principles that the United States applies in judging the acceptability of proposed sales of arms and arms-related technology.

Constraints on U.S. Sales

Many countries, including the U.S., are actively pursuing conversion of domestic defense industries into commercial production for the civilian market. We regard participation in the international arms market as a legitimate commercial activity and a normal instrument for promoting national interests. Many countries, including the United States, take financial considerations into account when exporting arms.

At the same time, we recognize that these sales can have important implications for our own security and foreign policy interests and those of the recipient and third parties. We therefore do not make commercial interests the major determinant of arms sales decisions.

Each sale proposed by a U.S. firm is given careful scrutiny within the U.S. government before it can go forward. This process is often subject to contentious debate both within the executive branch and between the executive branch and the legislative branch. All but the most routine cases are coordinated with other offices and agencies within the executive branch, based on whether their area of expertise relates to the case. In many cases, we are required by U.S. law to notify major sales to the U.S. Congress prior to conclusion of the sales agreement.

In almost every case, there are implications of the sale for the security of the U.S. and the confidence and stability of the larger international community.

Decisions on specific arms transfers take into account U.S. national security and arms control interests, the non-proliferation of destabilizing military capabilities, and the proposed recipient's legitimate defense requirements, ability to control effectively retransfer of the equipment, and external and internal behavior.

Parallel to our deliberative process we maintain strict enforcement of controls over exports of goods and technology.

General Prohibitions

Countries deemed to represent a direct threat to U.S. security are automatically ineligible to receive U.S. arms of any type. I am happy to report that the number of these countries has declined in recent years. Sales of arms or related technologies are not permitted when the recipients are thought to harbor aggressive designs on their neighbors.

We have refrained from selling military equipment to states which have adopted policies aimed at the systematic denial of human rights to a large portion of their populations. We have sought in addition to deprive states engaging in international terrorism from acquiring the means of committing further violence.

Absolute bans have also been placed on the transfer of especially destabilizing technologies. For instance, we have prohibited the transfer of all weapons of mass destruction. In this connection, we have adopted not only unilateral constraints on the sale of their most deadly delivery vehicles -- ballistic missiles and related technologies -- but have also joined multilateral agreements such as the Missile Technology Control Regime (MTCR).

Another critical consideration in evaluating weapons transfers is the capacity of the recipient to keep equipment as well as technology from being sold or transferred to third parties. Some newly-developed highly-advanced technologies -- such as the so-called "stealth" technologies -- are considered so critical to maintaining our defenses that we have refused to transfer them to any recipient.

Gray Areas: Need to Assess Regional Impact

The most difficult cases involve countries that are responsible members of the international community, but involved in protracted regional disputes. While recognizing legitimate needs of self-defense, we have constrained the export of arms or arms-related technology when convinced that such exports would upset regional arms balances, stimulate a

regional arms race, or undermine regional peace and security. In these instances, the nature and quantity of the technology to be transferred is of great importance.

Temporary Prohibitions

For some countries, such as those experiencing widespread civil unrest or recurring human rights problems, or where a military coup has caused increased instability or resulted in the establishment of an illegitimate government, we do not approve any exports of defense items until sufficient progress has been made toward rectifying the situation.

In such instances, we wish to avoid both supporting militaries that abuse their power, and contributing to any instability or continuing human rights violations. These, then, are some of the "tests" that projected U.S. arms sales must pass in order to be approved.

We recognize that applying these considerations to concrete cases is often difficult and that states can have honest disagreements over the potential impact of weapons transfers. We believe, however, that our common interests in international peace and stability outweigh disputes over specific cases and allow us to agree on general principles. Adherence to these guidelines has had, and will have, no effect on the ability of my country to support friends and allies.

The U.S. and other permanent members of the UN Security Council have already had extensive discussions on arms transfer restraints on how best to judge the regional political implications of arms sales, and we achieved a solid success in agreeing to general principles on judging these implications at the meeting I have referred to in London.

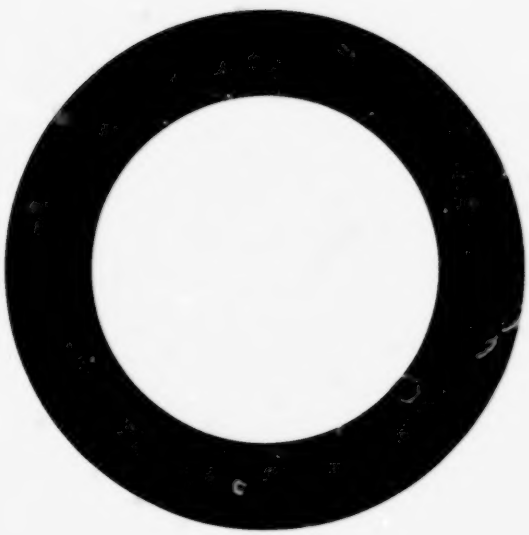
All countries should be made aware of the dangers of proliferation, and be encouraged to develop responsible national export policies and legal systems to enforce such policies. The two must go hand-in-hand, for even the best export control system is rendered worthless by irresponsible arms transfer policies.

The need for enhanced international cooperation in the area of conventional arms exports is made all the more important by the fact that the arms market is obviously shrinking. The volume and value of global arms transfers has fallen sharply. It is possible that the market may contract by at least another 25 percent by the end of the decade. This has heightened already fierce competition among suppliers. Many will not

survive. This can create pressure to make irresponsible arms exports.

While overall sales have declined, the relative U.S. share of the market has grown. Because of reduced arms purchases in the former communist world, the U.S. is now the largest arms exporter, accounting for roughly half of the new sales.

In view of these changes in the global arms market, and the relative increase in the U.S. share of it, we are even more conscious of the need to act responsibly and to promote international observance of responsible arms transfer policies. We take this responsibility very seriously. For our part, the U.S. stands ready to assist others in creating the type of export control process and policy framework to prevent destabilizing transfers of conventional arms.



CONFERENCE ON DISARMAMENT

CD/1207
CD/TIA/WP.12
20 July 1993

Original: ENGLISH

UNITED STATES OF AMERICA

U.S. arms export system: policy, practices & contacts

September 4, 1992

The United States views the transfer of conventional arms and other defense articles and services as an integral part of its national security, arms control, and foreign policies. Applied judiciously, foreign arms transfers can help meet the legitimate defense needs of friendly countries, deter aggression, and foster regional stability, thus promoting regional and international security and the peaceful resolution of disputes. Mindful of the potentially adverse consequences of indiscriminate international arms transfer, the United States strictly regulates arms exports and reexports and has a genuine interest in arms transfer restraint. The U.S. has initiated and participates in several international efforts related to arms transfer restraint, and remains prepared to consider other realistic proposals directed toward that end.

There are two channels by which the United States exports arms: the government-to-government security assistance program managed by the Department of Defense under the policy guidance of the Department of State; and, through private or direct commercial arms exports licensed by the Department of State. The legal, policy, and regulatory bases of U.S. arms transfers are elaborate, comprehensive, and transparent.

Security Assistance. U.S. government-to-government programs are conducted under statutory authority of the Foreign Assistance Act of 1961, as amended, and the Arms Export Control Act (AECA), as amended. They consist of foreign military sales (FMS), the Foreign Military Financing Program (FMF), and the Excess Defense Articles Program (EDA). FMS transfers may take the form of cash or FMF, the latter extended by the Department of Defense as grants of concessional rate loans that may be used to procure defense articles, defense services, and design and construction services from the military departments or directly from U.S. commercial suppliers. EDA are defense articles declared "excess" to Department of Defense needs and sold to foreign governments at reduced prices based on age and condition. Although FMS traditionally has been the main vehicle for U.S. arms transfers, commercial arms sales have been increasing in value relative to FMS.

Commercial Arms Exports. Direct commercial sales of U.S.-origin defense products, components, technologies and services are governed by the Arms Export Control Act and implemented under the International Traffic in Arms Regulations (ITAR). Control over the export of defense articles and services is exercised through a comprehensive export licensing system administered by the State Department's Office of Defense Trade Controls, formerly the Office of Munitions Control.

The essential features of the U.S. export system include:

The U.S. Munitions List. The Arms Export Control Act provides for the President to designate which commodities shall be deemed to be defense articles and defense services. Such designated defense articles and services constitute the U.S. Munitions List (USML), which is contained in the ITAR. The designation of defense articles and services is based primarily on whether the article or service is deemed to be inherently military in character. Such articles may be further designated as "significant military equipment" for which special export controls are warranted because of the capacity for substantial military utility or capability. USML articles are subject to ITAR controls and regulated by the Department of State.

The ITAR defines defense services as:

> (a) The furnishing of assistance, including training to foreign persons in the design, engineering, development, production, processing, manufacture, use, operation, overhaul, repair, maintanance, modification, or reconstruction of defense articles, whether in the United States or abroad; or (b) the furnishing to foreign persons of any technical data, whether in the United States or abroad.

Technical Data. The extent to which the U.S. controls technical data exports is probably unique among the world's leading exporters. Any exporter who wishes to export technical data pertaining to any article covered by the United States Munitions List must receive prior licensing approval from the Office of Defense Trade Controls (DTC).

Technical data is information "directly related" to the design, production, use, repair, or modification of defense articles. It does not include information concerning general scientific principles commonly taught in academia. It also does not include base marketing information on function or purpose or general system description of defense articles. The export of technical data is regulated regardless of whether the data is transmitted by phone, written correspondence, telex, fax, or in person conversation.

There are certain licensing exemptions for the export of technical data. They include:

--Technical data to be disclosed pursuant to an official written request or directive from the U.S. Department of Defense;

--Technical data in furtherance of a manufacturing license or technical assistance agreement approved by DTC;

--Technical data sent by a U.S. corporation to its U.S. person-employee or to the USG;

--Technical data in the form of basic operations, maintenance, and training information relating to a defense article lawfully exported or authorized for export to the same recipient;

--Technical data approved for public release, even if unpublished, by the cognizant U.S. agency.

Arms Export Licensing System. Central to the regulation of commercial arms exports is the licensing system administered by the Department of State's Office of Defense Trade Controls (DTC). Commercial firms and private individuals engaged in the manufacture or export of U.S.-origin defense articles and services must register with DTC. All U.S. persons must seek approval from DTC to export any item or service covered by the USML, unless the export is specifically exempted under the ITAR. In some instances, non-transfer and end use assurances are required of end-users and appropriate authorities in charge of monitoring legal transactions of the private sector. U.S. law provides for sanctions in the event of violations of export regulations.

Decisions to approve or deny arms export license applications are considered on a case-by-case basis and subject to an intra-governmental review and coordination process. A broad range of factors is taken into account, including:

-- the stated end-use and end-user of the equipment or services;

-- whether the transfer is consistent with U.S. national security, foreign policy and international obligations;

-- whether it will contribute to or adversely affect regional security and stability;

-- the recipients legitimate defense requirements;

-- whether the proposed transfer can be absorbed without overburdening the recipient's military support system or financial resources; and,

-- whether other legal and policy requirements (e.g., arms control and human rights) are satisfied.

Retransfer/Re-Export. Persuant to ITAR § 123.9(a), the country designated as the ultimate destination on an export license application or on a shipper's export declaration must be the country of ultimate end-use. The prior written approval of the Department of State must be obtained before reselling, diverting, transferring, transhipping, or disposing of a defense article in any country other that the country of ultimate destination as stated on the export license, or on the shipper's export declaration in cases where an exemption is claimed.

In addition, § 123.10 of the ITAR requires that an application for a license to export significant military equipment (as defined in § 120.19 of the ITAR) must be accompanied by a non-transfer and use certificate (Form DSP-83) at the time of submission to the Office of Defense Trade Controls. This form is to be executed by the foreign consignee and foreign end-user. The certificate stipulates that the foreign consignee and foreign end-user will not re-export, resell or otherwise dispose of the significant military equipment enumerated in the application outside the country named as the location of the foreign end-use, without the prior written approval of the Department of State.

Enforcement Operations. Export control enforcement efforts are both preventive and reactive and can be either administrative or judicial. Under the authority of ITAR, any license or other approval may be suspended, revoked, denied or amended without prior notice whenever DTC believes that applicable laws and regulations have been violated. Reported and attempted violations of the ITAR are investigated in coordination with appropriate offices and agencies. By long-standing interdepartmental agreement, the U.S. Customs Service conducts actual investigations of alleged violations. DTC coordinates with and assists Customs and other law enforcement authorities in conducting their investigations. DTC also assists in consulting the Department of Justice if criminal procedings are to occur. Enforcement actions range from detention and seizure of suspect shipments to criminal prosecution of firms and individuals. Commercial firms or individuals convicted of violating the ITAR can be debarred from participating in the export of defense articles and services, as well as the transfer of technical data for a

period up to three years. They may also be subject to criminal and civil fines as well as imprisonment.

Legislative Oversight. Congressional interest in, and oversight of the Security Assistance and Commercial Arms Sales Programs is extensive. The Congress is able to oversee these programs through the statutory reporting requirements which are mandated by the AECA. The AECA also provides for Congressional notification prior to the issuance of certain types of licenses. This includes the export of major defense equipment valued at $14 million or more, or the export of any defense articles or services valued at $50 million or more. Similar certification is required before approval of technical assistance or manufacturing license agreements that involve the manufacture abroad of significant military equipment to any country except NATO members. Additionally, Congress must be provided with an annual estimate of anticipated approval during the current calendar year.

Transparency of U.S. Arms Transfers. The previously mentioned statutory Congressional notifications are matters of public record, and contribute to the openness and transparency of the U.S. arms export program. By statute, the President is also required to submit an annual budget request for Security Assistance Programs which is generally presented in Open testimony and published as the Congressional Presentation for Security Assistance Programs. Furthermore, the U.S. Defense Security Assistance Agency publishes the implementation guidance for the Security Assistance Program in the Security Assistance Management Manual, and also publishes annual comprehensive reports entitled Fiscal Year Series and Foreign Military Sales, Military Construction Sales and Military Assistance Facts; and the U.S. Agency for International Development annually publishes U.S. Overseas Loans and Grants and Assistance from International Organizations, including country-by-country military assistance program data. Finally, the U.S. Arms Control and Disarmament Agency's (ACDA) annual publication, World Military Expenditures and Arms Transfers, is designed to provide comprehensive public information on international arms transfers. Such transparency, we believe, can contribute to international confidence by increasing regional stability and restraining destabilizing arms sales.